

LIST OF LEGAL ISSUES REGARDING PROPOSED INITIATIVES
for Submission to
The Citizens Committee to Study the Flower Fields and Strawberry Fields Area
June 13, 2006

The Citizens Committee to Study the Flower Fields and Strawberry Fields Area (Committee) has requested that San Diego Gas & Electric Company (SDG&E), as the owner of certain real property (Encina Property) located north of Cannon Drive in the City of Carlsbad (City), submit a list of legal issues regarding certain proposed initiatives potentially affecting the Encina Property: Proposition A, entitled “Save the Strawberry and Flower Growing Fields Act of 2006”, and Proposition C, entitled “The Flower Fields, Strawberry Fields, Open Space and Public Trails Protection Act of 2006”. SDG&E hereby submits the following list of legal issues regarding Proposition A and Proposition C to the Committee, and respectfully requests the Committee’s review and comment:

1. Both Proposition A and Proposition C appear to have been proposed as a reaction to a specific planned development of the Encina Property, certain elements of which would have protected critical open space areas, increased public access to open space and created public parkland. It has been suggested that one of the underlying motives of Proposition A is to eliminate development options for the Encina Property and, consequently, put the development agenda of an alleged financial contributor to Proposition A in a more favorable position. How does the City intend to demonstrate that Proposition A and Proposition C do not unfairly target Encina Property and are not enacted with the improper motive of defeating the development of the Encina Property, and thus are not arbitrary and discriminatory enactments in excess of the City’s police power?
2. Both Proposition A and Proposition C cite, as one of their main objectives, the preservation of open space within the City and, in particular, coastal agriculture. However, any development of the Encina Property would also protect critical open space areas, increase public access to open space and create public parkland. The development of the Encina Property might also provide affordable housing, which the California Legislature has declared to be of vital statewide importance. How does the City intend to demonstrate that the use restrictions contained in both Proposition A and Proposition C, and in particular, the coastal agriculture use restriction, are rationally related to the general regional public welfare? How does the City intend to demonstrate that such use restrictions promote the general regional public welfare, rather than merely the interests of certain individuals and adjacent property owners, and thus are not arbitrary and discriminatory enactments in excess of the City’s police power?
3. As stated above, both Proposition A and Proposition C cite the preservation of open space and coastal agriculture as one of their goals. However, the character of the property surrounding the Encina Property is overwhelmingly commercial and residential. Both Proposition A and Proposition C would single out the Encina Property for uses inconsistent with the surrounding area, creating an isolated area that will become an island in a sea of less restrictive uses. How does the City intend to demonstrate that the

use restrictions contained in both Proposition A and Proposition C do not constitute oppressive and invalid spot zoning, granting to SDG&E fewer rights than the owners of surrounding property and requiring SDG&E to use its property for uses inconsistent with the area?

4. Proposition C states that the purpose of the measure is to ensure that the Encina Property is “preserved in open space and that farming is allowed to continue as long as it is viable” and would expressly prohibit any residential, commercial or industrial development of the Encina Property. However, Proposition C would permit the construction of civic buildings on the Encina Property. How does the City intend to disprove the inference that one of the underlying objectives of Proposition C is to depress the fair market value of the Encina Property by prohibiting its improvement or development, thereby allowing the City to acquire land at a reduced price for the development of its civic buildings, and that Proposition C is not being enacted for an improper legislative motive?
5. One of the main objectives of both Proposition A and Proposition C appears to be the restriction of the use of the Encina Property to the growth of strawberries, as evidenced by the consistent use of the term “Strawberry Fields” throughout both propositions. SDG&E notes that the term “Strawberry Fields” is a misnomer, since the majority of the 257 acres that comprise the Encina Property is not used for the production of strawberries. In any case, no studies or analyses have been conducted, and no evidence has been presented, that strawberry production is vital to the public health, safety or general welfare of the region, especially given the vastly different character of the surrounding area. How does the City intend to demonstrate that the continuation of strawberry production bears a substantial and rational relationship to the regional public welfare, and thus such a restriction is not an arbitrary and unreasonable enactment in excess of the City’s police power?
6. As stated above, both Proposition A and Proposition C would restrict the use of the Encina Property to open space, and in particular, coastal agriculture. While much of the Encina Property is already designated as open space in the general plan, a forty-five acre portion of the Encina Property is designated as travel/recreational. Both Proposition A and Proposition C would change the designation of this portion to open space, despite previous assurances that Proposition C would maintain the current general plan designations of the Encina Property. However, it is unlikely that agricultural uses of the Encina Property will continue to be economically viable, especially given the vastly different character of the surrounding areas. Furthermore, the costs associated with the continued maintenance and preservation of the Agua Hedionda Lagoon, such as the cost of stormwater prevention programs, far outweigh the revenues generated by any agricultural lease of the Encina Property or any other use permitted under Proposition A or Proposition C. Accordingly, Proposition A and Proposition C, if enacted, would deprive SDG&E of substantially all reasonable and economically viable use of the Encina Property. How does the City intend to demonstrate that the enactment of Proposition A or Proposition C would not constitute an unconstitutional taking, and that Proposition A and Proposition C are not subject to invalidation? Alternatively, how does the City intend to compensate SDG&E for the taking of the Encina Property that will occur if

Proposition A or Proposition C is enacted? If Proposition A or Proposition C is enacted, who will pay the costs associated with the continued maintenance and preservation of the Agua Hedionda Lagoon?

7. It does not appear that the City has previously announced or promoted any comprehensive plan of preserving coastal agriculture in the region. Rather, as stated above, it appears that Proposition A and Proposition C were proposed as a reaction to a specific planned development of the Encina Property. How does the City intend to demonstrate that Proposition A and Proposition C do not single out the Encina Property for unduly harsh treatment, but apply to an entire area, and produce a fair and equitable distribution of the burdens imposed by each of them? More generally, how does the City intend to demonstrate that the severe economic impact imposed by Proposition A and Proposition C on the Encina Property is fair in light of the arguably narrow public benefit accruing from them?
8. The Encina Property is currently zoned “Public Utility” and is used for public utility purposes, which are governed by the California Public Utilities Commission (CPUC). The City may not regulate matters over which the CPUC has been granted jurisdiction, and any City laws, statutes, codes, ordinances, rules or regulations purporting to do so are preempted by the CPUC. Neither Proposition A nor Proposition C takes into account the current public utility uses of the Encina Property. While Section 3.10 of Proposition A refers to continued use of SDG&E’s transmission corridor, SDG&E owns all of the Encina Property, and the City may not restrict the use of the Encina Property for public utility purposes. How does the City intend to amend Proposition A and Proposition C to acknowledge these essential public utility functions? Is the City aware that the restrictions contained in Proposition A and Proposition C, as applied to public utility functions, are preempted by the CPUC?
9. SDG&E is a public utility, and any costs of any restrictions placed on the Encina Property by Proposition A or Proposition C, or any litigation regarding them, must be borne by SDG&E’s ratepayers. For instance, the costs associated with the continued maintenance and preservation of the Agua Hedionda Lagoon, such as the cost of stormwater prevention programs, far outweigh the revenues generated by any agricultural lease of the Encina Property or any other use permitted under Proposition A or Proposition C. How does the City justify imposing the disproportionate burden of this cost on SDG&E’s ratepayers? How does the City justify the probable impact of such restrictions and/or litigation on the provision of essential public utilities to the public?
10. Section 3.4 and Section 3.14 of Proposition A appear to violate the requirement that an initiative must actually perform legislative acts, rather than directing that such acts be performed or generally indicating what legislative amendments need to be made, thereby leaving it to the administrative or legislative body to actually make the conforming changes. How does the City propose to amend Proposition A to satisfy this requirement?